

Chesapeake Bay Preservation Act Work Program - Stakeholder Issues Matrix with Staff Recommendations – Proposed Review Order, April 5, 2011

No.	ISSUE DESCRIPTION/ CURRENT DRAFT ORDINANCE	OPTIONS	STAKEHOLDER COMMENTS AND ACTION Thru 12-14-10	STAFF RECOMMENDATION	COMMITTEE OF THE WHOLE COMMENTS & RECOMMENDATIONS
A.	AREAS OF AGREEMENT				
<p>1.</p> <p>(1)</p>	<p>How should the Resource Protection Area (RPA) be mapped?</p> <p>The draft Chesapeake Bay Preservation Area Map (“the Map”) is general in nature and is not intended to depict the specific extent of the RPA. The Map is estimated to capture two-thirds of the perennial streams in the County, and does not depict any connected wetlands. The draft map lacks certainty due to the fact that additional areas of RPA could be identified by the site-specific delineation for projects that disturb 2,500 sf. There is concern regarding the added cost to the landowner to perform the site-specific RPA delineation.</p> <p>Current Draft Ordinance: Requires applicants to submit site-specific RPA delineations for land disturbance over 2,500 square feet (sf) to verify the location of perennial water bodies and connected wetlands. The RPA includes a 100-foot buffer measured 100 feet from the ordinary high water mark (e.g., stream bank) of each side of a perennial water body and from any connected wetlands. The Map is used for identifying the limits of the RPA for single-family detached dwellings and associated accessory structures and agricultural structures that disturb 2,500 sf or less of land without a site-specific RPA delineation.</p>	<p>1. Retain the current draft Ordinance/Map.</p> <p><u>Considerations:</u></p> <ul style="list-style-type: none"> The draft map lacks certainty due to the fact that additional areas of RPA could be identified by the site-specific delineation for projects that disturb more than 2,500 sf. Additional costs to applicants for projects that disturb more than 2,500 sf of land, particularly individual homeowners and farmers, for consultant fees to prepare the site-specific RPA delineations. Ensures that all perennial streams and connected wetland are identified and protected for projects that disturb more than 2,500 sf of land. <p>2. Hire a consultant to identify all perennial streams in the County.</p> <p><u>Considerations:</u></p> <ul style="list-style-type: none"> Identifies and protects the estimated one-third of the perennial streams that have not been identified and mapped. Provides a cost reduction for applicants required to perform site-specific RPA delineation, due to the fact that only connected wetlands would need to be identified. Involves a substantial fiscal impact – that in some cases would be unnecessary, as perennial streams would only need to mapped for projects that disturb more than 2,500 sf, based on the current draft Ordinance. Cannot be implemented without permission from landowners to access properties to analyze streams. Would not identify connected wetlands, resulting in the continued requirement for site-specific delineations for projects greater than 2,500 sf, as required by the current draft Ordinance. It would be cost-prohibitive for the County to map all connected wetlands. <p>3. Offer property owners the option of having County staff conduct the site-specific RPA delineations for single family detached dwellings, associated accessory structures, and agricultural structures.</p> <p><u>Considerations:</u></p> <ul style="list-style-type: none"> Reduces or eliminates the cost of the RPA delineation for landowners. Would likely require additional resources, to include a wetland specialist, which would have budget implications. <p>4. Map the RPA by using a minimum drainage area where the 100-foot RPA buffer would be required.</p>	<p>11-16-10 Triage of Issues:</p> <p>Loudoun Valley Estates (LVE) #5 & #6 PEC #6 FSM #5 & #6 NAIOP Major Issue REDC #6 EDC Connected Wetlands</p> <p>Decision Taken 12-2-10:</p> <p>Prefer existing County RPA map of perennial streams (“the green line”) with no additional delineations (Option #5)</p> <p>(15 out of 22 members in favor)</p> <p>Key issues discussed:</p> <ul style="list-style-type: none"> Balancing the desire to include all perennial streams, with the difficulty and cost of obtaining reliable data to identify such streams (staff estimates that about 2/3 of all perennial streams are shown on the current map). Cost of delineation to the County; cost of delineation to the landowner. Balancing cost impacts on different types of landowners – homeowners, farmers, developers. Level of accuracy/amount of built-in error in defining perennial streams. Process, cost, and timing of delineations and of exemptions/waivers. Area of land disturbance allowed before site delineation is required. 	<p>Staff can support the stakeholder recommendation to use the existing County RPA map of perennial streams (“the green line” – Option #5).</p> <p>Staff notes that delineations will only be required in cases where disturbances are proposed within the mapped RPA to identify the area within 100 feet of the stream.</p>	<p>February 15, 2011:</p> <p>The Board deferred discussion of this Issue to the next meeting and directed the County Attorney to provide additional information pertaining to existing structures in the RPA.</p> <p>The County Attorney has advised that those structures can be put to any use lawful under other applicable federal, state, and local regulations. There is no legal requirement to disclose the presence of RPA on the property as a condition of sale, transfer, or financing. The RPA would be treated like any other regulation applicable to the property, which is typically a matter for the buyer or financing institution to investigate at their discretion.</p> <p>[Staff Note: Section 1222.10 of the current draft Chesapeake Bay Preservation Ordinance addresses nonconforming structures and uses.]</p> <p>March 1, 2011:</p> <p>The Board voted to support the Staff/Stakeholder recommendation (Option #5) [8-1, Delgaudio (opposed)].</p> <p>The Board provided clarification that the existing map would not include the RPA adjacent to ponds consistent with Issue #10.</p> <p>Supervisor Waters moved to amend the motion to require Staff to mail notices to property owners affected by the RPA [Motion passed 5-4, Buckley, Burk, Kurtz, Miller (opposed)].</p> <p>Staff estimated that it would take approximately four weeks to develop and provide notice.</p> <p>The Board provided clarification that the notice was to be provided following discussion of the Issues Matrix and development of a revised ordinance.</p>

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		<p><u>Considerations:</u></p> <ul style="list-style-type: none"> Eliminates uncertainty as to the presence of the 100-foot RPA Buffer. There is no scientific data to support a connection between any particular size drainage area and the perenniality of a stream. This would result in the RPA buffer being required adjacent to some intermittent streams and would exclude some perennial streams from being buffered.(Staff notes that the public hearing notice indicated that the proposed ordinance would relate to perennial water bodies, with no mention of intermittent streams.) Connected wetlands would not be identified and protected. Mapping drainage area to streams in Eastern Loudoun where piped drainage predominates would be difficult and may result in the need to require drainage area studies to be performed by applicants, reducing the level of desired certainty and increasing the cost to applicants. <p>5. Use the RPA as currently mapped and do not require additional RPA delineations.</p> <p><u>Considerations:</u></p> <ul style="list-style-type: none"> Eliminates uncertainty as to the presence of the 100-foot RPA Buffer. Eliminates costs associated with the site-specific RPA delineation. An estimated one-third of the perennial streams (and existing planted buffers) in the County would not be identified and would remain unprotected. Connected wetlands would not be identified and would remain unprotected. <p>6. Use the RPA as currently mapped and require additional RPA delineations for specified application types (e.g., ZMAP, SPEX, SBPL, CPAP, STPL, specified grading permits).</p> <p><u>Considerations:</u></p> <ul style="list-style-type: none"> Eliminates uncertainty as to the presence of the 100-foot RPA Buffer for homeowners and farmers. Perennial streams and connected wetlands would be identified and protected in conjunction with the specified land development applications. 			Supervisor Delgaudio directed staff to create a list of properties with RPA as currently mapped to be available as a public document.
2. (4)	Should the Draft RPA Screening Tool be eliminated? (RMA/Possible RPA identified in yellow).	<p>1. Retain the current Screening Tool.</p> <p>2. Eliminate the Screening Tool.</p>	<p>11-16-10 Triage of Issues:</p> <p>During the triage the stakeholders agreed to eliminate the Screening Tool (Option</p>	Staff can support the stakeholder recommendation to eliminate the screening tool (Option #2).	<p>February 15, 2011:</p> <p>The Board voted to support the Staff/Stakeholder Recommendation</p>

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	<p>A concern has been the expressed regarding the potential effect of the Screening Tool on property values and the ability to sell a property, as it identifies parcels that may contain RPA. There is also a concern that the total area depicted on the Screening Tool as “RMA/Possible RPA” may be designated as RPA in the future.</p> <p>Current Screening Tool: The current screening tool was proposed to be used by Staff to identify areas of the County where an RPA delineation would be required in conjunction with certain residential and agricultural grading permit applications. Under the Current Draft Ordinance, an RPA delineation would be required for grading permits for single family detached dwellings and associated accessory structures and agricultural structures proposing land disturbance greater than 2,500 sf, where any portion of the land disturbance is located within 200 feet of a stream or water body that has the potential to be perennial. The intent of the tool was to eliminate the need to perform an RPA delineation in conjunction with these residential and agricultural grading permit applications if all of the land disturbance would be located further than 200 feet from a surface drainage feature.</p> <p>Without the Screening Tool, the Administrator could still waive the RPA delineation for any project that disturbs more than 2,500 sf, where there are no streams or water bodies with the potential to be characterized as a water body with perennial flow, located within the limits of land disturbing activity, nor within 200 feet of the limits of land disturbing activity, as defined in Section 1222.08(a).</p>	<p><u>Considerations:</u></p> <ul style="list-style-type: none"> The elimination of the draft RPA Screening Tool Map would alleviate concerns regarding the potential negative implications on individual properties. This would eliminate the concern regarding the total area depicted on the Screening Tool being designated as RPA in the future. Property owners would not have a visual representation of where the Administrator could waive the RPA delineation as outlined in the Ordinance. 	#2).		(Option #2) [9-0].
3. (5)	<p>Should accessory residential structures be exempt from the CBPO requirements?</p> <p>Current Draft Ordinance: Approval from the Chesapeake Bay Review Board is required to locate a detached accessory structure of any size in the RPA. If located in the landward 50 feet of the RPA, a Minor Water Quality Impact Assessment (WQIA) is required. If located in the Seaward 50 feet of the RPA, a Major WQIA is required. Thus,</p>	<p>1. Retain the current draft Ordinance.</p> <p>2. Exempt one residential accessory structure up to 150 square feet in size in the RPA per lot.</p> <p><u>Considerations:</u></p> <ul style="list-style-type: none"> This option would eliminate the costs associated with County review and approval of the referenced improvements. This option would not require a Water Quality Impact Assessment and the 	<p>11-16-10 Triage of Issues:</p> <p>NAIOP may be tied to other issues and resolve itself with consideration of other issues. DAAR Similar to #2 (Fairfax County) WW Separate from other issues, geared toward sheds, as opposed to additions.</p> <p>Decision Taken 12-9-10:</p>	<p>Staff can support exempting residential accessory structures located anywhere within the RPA with a cumulative footprint and disturbance of up to 150 sf per lot inclusive of existing accessory structures in the RPA (Option #3).</p>	<p>February 15, 2011:</p> <p>The Board voted to support the Staff Recommendation (Option #3) [5-0-1-3, York (absent), Burton, Kurtz, McGimsey (abstained)].</p> <p>The Board also voted to exempt play sets up to 500 square feet of footprint/land disturbance in the RPA, with play set defined as follows:</p>

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		the current Ordinance provides an incentive to locate the structure farther away from perennial water bodies.	<p>accompanying mitigation or approval of an RPA exception.</p> <ul style="list-style-type: none">This will result in an incremental decrease in water quality when compared to the current draft ordinance due to the removal of vegetation within the buffer and the establishment of impervious cover.Existing structures within the RPA would be grandfathered, but would be counted toward the 150 sf exemption.The option as proposed does not incentivize the location of the structure farther away from the perennial water body. <p>3. Exempt residential accessory structures in the RPA with a cumulative footprint and disturbance of up to 150 sf per lot inclusive of existing accessory structures in the RPA.</p> <p><u>Considerations:</u></p> <ul style="list-style-type: none">Same considerations as Option 2.This option allows multiple accessory structures with a total cumulative footprint of 150 sf per lot.	<p>As part of the discussion of buffer widths, stakeholders expressed general support for exempting residential accessory structures up to 150 sf, but did not select a specific option. They also suggested that exemptions more than 150 sf in the landward portion of the buffer be considered.</p> <p>(14 out of 20 in favor)</p>		<p>“Outdoor play sets are exempt – an outdoor play set is a structure erected outside for children to play on and around. Typical components of an outdoor play set include towers, bridges, ladders, sandboxes, slides, swings, and monkey bars, or any combination of one or more substantially similar items.” [5-0, York (absent), Burton, Kurtz, McGimsey (abstained)]</p>
4. (11)		<p>Should the definition of “Best Management Practices” be revised as follows: “...a practice or combination of practices that are the most an effective, practicable means of preventing or reducing the amount of pollution generated by non-point sources (NPS) to a level compatible with established water quality goals?”</p> <p>Current Draft Ordinance: The draft ordinance includes an amended definition recommended by the Planning Commission Subcommittee and the Planning Commission:</p> <p><i>“Best Management Practice” or “BMP” means a practice or combination of practices that are the most effective, and practical practicable means of preventing or reducing the amount of pollution generated by non-point sources (NPS) to a level compatible with established water quality goals.</i></p>	<p>1. Retain the current draft Ordinance.</p> <p>2. Change the definition as proposed.</p> <p><u>Considerations:</u></p> <ul style="list-style-type: none">The language is not consistent with the agricultural BMP requirements outlined in Section 1222.15, which require the BMP that addresses the <u>more</u> predominant water quality issue, as opposed to <u>a</u> predominant water quality issue.“Most effective” is consistent with the BMP definition in the Revised 1993 Zoning Ordinance.	<p>11-16-10 Triage of Issues:</p> <p>FSM “most” or “best” is ambiguous, lacks detail. LVE #2. BRF What are established water quality goals of the CBPO? (Outlined in State Regulations). Lees Crossing (LC) How is effective quantified? Applies to agriculture in CBPO. No-till may not be as effective due to the need for chemical application. Ag Summit Weigh in at next meeting. NAIOP Wordsmithing issue.</p> <p>Stakeholders did not take action on this issue.</p>	<p>Staff can support changing the wording of the definition from “the most effective” to “an effective” practice(s) (Option #2).</p>	<p>February 15, 2011:</p> <p>The Board voted to support the Staff Recommendation (Option #2) [8-0-1 (York absent)].</p>
5. (19)		Should the Ordinance include the optional provision to allow a plastic filter to be installed and maintained in the outflow pipe from the septic tank to filter solid material from the effluent while sustaining adequate flow to the drainfield as an alternative to the mandatory pump-out?	<p>1. Retain the current draft Ordinance.</p> <p>2. Incorporate the plastic filter alternative to the mandatory pump-out.</p> <p><u>Considerations:</u></p> <ul style="list-style-type: none">The Health Department has indicated that the plastic filter option is not	<p>11-16-10 Triage of Issues:</p> <p>PEC Option #1 due to Health Department concerns. No opposition to Option #1. Issue Resolved.</p>	<p>Staff supports the Stakeholders’ recommendation to retain the current ordinance (Option #1).</p>	<p>February 15, 2011:</p> <p>The Board voted to support the Staff/Stakeholder Recommendation (Option #1) [7-1-1, Miller (opposed), York (absent)].</p>

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		recommended due to the fact that these devices tend to clog and are often removed, rather than replaced, once they stop functioning.			
6. (24)	Should Section 1222.21 be amended as follows: The Administrator may shall waive the Performance Criteria . . . There concern is that there is an overly broad discretion vested in the Administrator when the criteria specified have been met.	1. Retain the current draft Ordinance. 2. Amend Section 1222.21 as suggested. <u>Considerations:</u> <ul style="list-style-type: none"> The Administrator may still deny the request. 	11-16-10 Triage of Issues: REDC Why wouldn't Administrator approve if met the findings? (Administrator would.) Option #2. Issue Resolved.	Staff supports the Stakeholder recommendation to change “may” to “shall” (Option #2).	February 15, 2011: The Board voted to support the Staff/Stakeholder Recommendation (Option #2) [8-0-1 (York absent)].
7. (29)	Should the E&S exemption for “septic tanks lines and drainage fields unless included in an overall plan for land disturbing activity relating to construction of the building to be served by the septic tank system” be retained to minimize costs for drainfield repair and replacement? Current Draft Ordinance: The current ordinance removes the exemption consistent with the Bay Act regulations.	1. Retain the current draft Ordinance. 2. Maintain the referenced exemption. <u>Considerations:</u> <ul style="list-style-type: none"> The cost of the grading permit may be a disincentive to repairing malfunctioning systems which are detrimental to water quality. 	11-16-10 Triage of Issues: Option #2. Issue Resolved.	Staff supports the stakeholder recommendation to maintain the current Erosion Control Ordinance exemption for “septic tanks lines and drainage fields unless included in an overall plan for land disturbing activity relating to construction of the building to be served by the septic tank system” (Option #2).	February 15, 2011: The Board voted to support the Staff/Stakeholder Recommendation (Option #2) [8-0-1 (York absent)].
8. (25)	Should the County actively fund programs to protect streams and wetlands in agricultural areas (current Federal and State funding is not enough) to: 1. Fence out cattle from streams, springs, and wetlands with ideally 100 feet or more buffers and purchase perpetual easements on such areas; 2. Install water systems for cattle in conjunction with such fencing; and 3. Reforest these buffers with native herbaceous, shrubs and trees. Current Draft Ordinance: Agricultural requirements are outlined in Section 1222.15. Installation of cropland Best Management Practices (BMPs) is required to offset 50-foot and 75-foot cropland encroachments into the 100-foot buffer. Grazing land BMPs (e.g., livestock fencing) would only be required where permanent vegetative cover cannot be maintained.	1. Retain the current draft Ordinance. <u>Considerations:</u> <ul style="list-style-type: none"> Existing cost-share funding could be prioritized to assist with the implementation of the Ordinance. 2. Pursue funding options for fencing livestock out of streams, installing alternative watering systems, and reforesting agricultural buffers. <u>Considerations:</u> <ul style="list-style-type: none"> The Transportation Land Use Committee (TLUC) initiated discussion of riparian buffer incentives during the October 20, 2010 TLUC meeting. The Action Item for the October 20, 2010 TLUC meeting summarized existing and potential incentives to support implementation of the Ordinance requirements and to encourage implementation above and beyond the Ordinance requirements. 	11-16-10 Triage of Issues: WW Will this impact taxes? (TLUC item proposes allocation less than \$100,000.) REDC Cost to fund ag practices may be important to meet TMDL. Ag Summit Maintenance and replacement of fence is not covered. Pennsylvania has a fund for maintenance following catastrophic events. NAIOP Wait to see outcome of TLUC discussion. REDC Stakeholders could lend support to provide additional funding. LC Does this only regard funding? (Maintain or increase funding.) LVE Does this only benefit ag landowners? (Urban component also.) SWCD Administer State Cost-Share program that is currently voluntary. Ag land not in production is excluded. Damaged measures must be replaces or cost-share must be returned. May significantly affect agricultural production. NAIOP Economic impacts already identified in 84 Tidewater localities. Determine if it is an appropriate water quality option. Board may elect to provide additional funding to support	The Transportation and Land Use Committee is currently exploring incentives for establishing and retaining riparian buffers, which includes the possible funding of various programs.	February 15, 2011: This issue was included as information only and will be discussed at the March 1, 2011 Board Meeting.

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			implementation. DAAR Will voluntary adoption affect funding? (No link between adoption and funding). SWCD Need more financial support if participation becomes mandatory. Option #2. Stakeholders were forwarded all applicable reports to the Board of Supervisors Transportation Land Use Committee, and meeting summaries from the applicable meetings. Stakeholders did not discuss the funding incentives under consideration by the Committee.		
B.	BUFFER WIDTH/EXEMPTIONS/WAIVERS/PLANTING REQUIREMENTS				
9. (33)	Is 100-foot buffer necessary in all circumstances? Should the buffer be reduced or increased based upon scientific data? Current Draft Ordinance: A 100-foot buffer adjacent to and landward of the Ordinary High Water Mark of perennial streams and connected wetlands is required.	1. Retain the current draft Ordinance (100-foot buffer). <u>Considerations:</u> <ul style="list-style-type: none">The Chesapeake Bay Preservation Area Designation and Management Regulations requires a buffer area not less than 100 feet in width located adjacent to and landward of both sides of any water body with perennial flow and connected wetlands.The Chesapeake Bay Preservation Area Designation and Management Regulations state that “The 100-foot wide buffer area shall be deemed to achieve a 75% reduction of sediments and a 40% reduction of nutrients.”“The Chesapeake Bay Program recommends minimum widths of 75-150 feet wherever possible, in order to achieve the widest range of water quality and habitat objectives.” 2. Expand the 100-foot buffer. <u>Considerations:</u> <ul style="list-style-type: none">There would be additional sediment and nutrient removal benefits of an expanded buffer.There would be additional flood control and wildlife benefits of an expanded buffer.Wider buffers provide additional pollutant removal on sloping land.“The Chesapeake Bay Program recommends minimum widths of 75-150 feet wherever possible, in order to achieve the widest range of water quality and habitat objectives.”	This issue was raised during the 11-16-10 Stakeholder Meeting. Decision taken 12-7-10: Require only a 35-foot buffer with limited exemptions. (17 out of 24 members in favor) <i>(Note that agreement on this issue divided in a fairly common manner within the group: broad support was given by the HOA representatives and others, but little or no support from environmental group representatives)</i> Broad agreement that exemptions could include such items as: <ul style="list-style-type: none">a. Agriculture and rural uses and no-till activities, conditioned on having a nutrient management plan approved by the SWCD and implementation of no-till practices.b. Farm Ponds.c. Residential accessory structures in the RPA up to a cumulative total of 150 square feet in the landward portion of the buffer.d. Existing lots with qualifying limits such as the size of the lot or the percentage of the lot affected by RPA.e. Private roads, wetland restoration areas, septic fields, storm drains.f. Wet ponds.	Staff cannot support the 35-foot buffer as it does not adequately address water quality protection. However, staff can support a reduction to the 100-foot buffer with specific waivers and exemptions. Staff recommends further discussion with the Board on this issue.	February 15, 2011: Supervisor Buckley noted that there are principally two buffer options: 1) a narrower buffer, with less exemptions and 2) a wider buffer, with more exemptions. The Board agreed to defer discussion on this issue following discussion of the exemptions and waivers. March 1, 2011: Supervisor Buckley noted that there was currently no agreement regarding a buffer width and suggested that the Board defer the discussion following the review of the Issues Matrix.

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		<p>3. Reduce the 100-foot buffer.</p> <p><u>Considerations:</u></p> <ul style="list-style-type: none"> A reduced buffer would allow for more developable land without the need for approval of an Administrative Waiver or an RPA Exception. There would be reduced sediment and nutrient removal benefits of a reduced buffer. A reduced buffer would not support significant vegetation. The critical root zone of mature trees would frequently be impacted within a 50-foot buffer. Therefore, a 50-foot buffer may not be wide enough to maintain existing forest cover. Disturbances within the root zone would negatively affect mature trees. Trees provide organic matter necessary to sustain aquatic life. They also cool stream temperatures, which increases the level of dissolved oxygen in the stream. A reduced buffer may not provide any flood control benefits. Narrower buffers do not provide as much pollutant removal on sloping land. “The Chesapeake Bay Program recommends minimum widths of 75-150 feet wherever possible, in order to achieve the widest range of water quality and habitat objectives.” <p>4. Allow the 100-foot buffer to be reduced to 50-feet in conjunction with a prescribed planting.</p> <p><u>Considerations:</u></p> <ul style="list-style-type: none"> Same considerations as Option #3, plus the following: The prescribed planting would ensure that the full width of the reduced buffer is reforested, which would improve the water quality benefits of the buffer in cases where the buffer is not already forested. The reduced buffer would result in reduced water quality protection in cases where the 100-foot buffer is already forested and the reduction would result in removal of existing trees. This type of reduction could be proposed as an RPA Exception, where appropriate, under the current draft Ordinance. 	<p>g. No un-funded mandates within the buffer.</p> <p>h. Planned/approved trail crossings of streams.</p> <p>i. Existing development.</p> <p>j. A reasonable amount of certain disturbances [such as required infrastructure elements].</p> <p>Comments included:</p> <ul style="list-style-type: none"> What about water quality? If you add all these exemptions for only a 35-foot buffer, you end up with virtually no buffer at all and may not gain anything in regard to water quality. Don’t base exemptions on situations that are the exception, as opposed to the rule, based upon the worst case scenario. State has never studied the Piedmont areas for what kind of buffer is effective, which could lead to potential litigation. 		
10. (2)	<p>Should the RPA be removed adjacent to wet ponds?</p> <p>Current Draft Ordinance: Removes the RPA only when adjacent to Stormwater Management Ponds that have been designed</p>	<p>1. Retain current draft Ordinance.</p> <p><u>Considerations:</u></p> <ul style="list-style-type: none"> The RPA surrounding wet amenity ponds provides water quality treatment to sustain the physical integrity of the pond and aquatic life. 	<p>11-16-10 Triage of Issues:</p> <p>LVE Proffers require a buffer. REDC #3 w/Minor Modification PEC #2 w/Minor Modification Major Issue – most of the RPA falls</p>	<p>Staff can support the stakeholder recommendation to remove the RPA adjacent to all existing ponds, including wet and dry stormwater management ponds and farm ponds.</p>	<p>February 15, 2011:</p> <p>The Board voted to support the Staff/Stakeholder Recommendation [8-0-1, York (absent)].</p>

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		<p>to provide water quality treatment consistent with guidance from the Department of Conservation and Recreation (DCR).</p> <p>DCR has promulgated guidance clarifying that wet stormwater management facilities (lakes, ponds, and other impoundments) are exempt from classification as a water body with perennial flow, except in cases where the size of the facility exceeds stormwater management requirements. In the latter situation, the facility is considered to be an amenity and is treated as a water body with perennial flow (with an associated RPA)</p>	<ul style="list-style-type: none">This proposal is reflected in the September 21, 2010 Map. <p>2. Remove the RPA adjacent to those wet ponds that are the subject of a stormwater maintenance agreement with the County pursuant to Chapter 1096 of the Codified Ordinances.</p> <p><u>Considerations:</u></p> <ul style="list-style-type: none">Wet ponds subject to agreements are maintained by the County to ensure ongoing pollutant removal efficiency.This would reduce the number of wet ponds included in the RPA as originally proposed, but would increase the number of wet ponds included in the RPA as of September 21, 2010. <p>3. Remove the RPA adjacent to all wet ponds.</p> <p><u>Considerations:</u></p> <ul style="list-style-type: none">Allows improvements to be constructed within the RPA, resulting in additional disturbances and water quality impacts. These ponds would be constructed in adherence to requirements (i.e. erosion and sediment control).	<p>adjacent to wet ponds.</p> <p>Comments and discussion 12-14-10:</p> <ul style="list-style-type: none">It was noted that staff supported removing wet ponds from buffer areas.Does this include farm ponds?Does this include dry ponds?Does this include all stormwater management facilities?Need to deal with old dry ponds that are problems for water quality.Maintenance of ponds is an issue. <p>Decision Taken 12-14-10:</p> <p>Selected a new option to remove the RPA adjacent to all existing ponds, including wet and dry stormwater management ponds and farm ponds.</p> <p>(18 out of 25 members in favor)</p>		<p>April 5, 2011:</p> <p>The Board voted that all stormwater management ponds be treated the same and that there be no RPA buffer around either existing <i>or future</i> ponds in order to maintain consistency in the ordinance. [8-0-1, Miller (absent)].</p>
11. (14)		<p>Should “private roads” and “private driveways” be added to the list of exempt uses?</p> <p>Current Draft Ordinance: Private roads and driveways are listed as permitted uses in Section 1222.C provided that:</p> <p>i. The Administrator makes a finding that there are no reasonable alternatives to aligning the private road or driveway in or across the RPA;</p> <p>ii. The alignment and design of the private road or driveway are optimized, consistent with other applicable requirements, to minimize encroachment in the RPA and to minimize adverse effects on water quality; and</p> <p>iii. The design and construction of the private road or driveway satisfy all applicable Performance Criteria (Section 1222.17) and County Codes.</p> <p>A Water Quality Impact Assessment and</p>	<p>1. Retain the current draft Ordinance.</p> <p>2. Include private roads and private driveways with public roads as exempt uses under Section 1222.11(d).</p> <p><u>Considerations:</u></p> <ul style="list-style-type: none">Exempting private roads and driveways would eliminate the need for a Water Quality Impact Assessment and accompanying mitigation.While the optimization of the road alignment and design, consistent with other applicable requirements, to prevent or otherwise minimize encroachment in the RPA and minimize adverse effects on water quality would be required, private roads and private driveways would not require a finding that there is no reasonable alternative to aligning the private road or driveway in or across the RPA, resulting in additional disturbances within the RPA that could have otherwise have been avoided.	<p>11-16-10 Triage of Issues:</p> <p>PEC #1. LC Should we give opinions on each issue? (Yes.) NAIOP Major Issue Private Roads same as Public Roads in FSM? Ownership is only difference? LC Major Issue. LWC New construction or existing roads? (New construction, expansion of existing roads.)</p> <p>Decision Taken 12-9-10:</p> <p>As part of the discussion on buffer widths, stakeholders expressed general support for exempting private roads in addition to public roads, but expressed some concern regarding “conditional” exemptions (e.g., exemptions subject to certain conditions such as “minimize encroachment in the RPA and adverse effects on water quality”). (14 out of 20 stakeholders)</p>	<p>Staff can support new Option #3, as follows:</p> <p>Exempt private road and driveway crossings constructed generally perpendicular to the RPA subject to the criteria outlined for public roads in Section 1222.11(d) of the CBPO.</p> <p>Limiting the new exempt use to private road and driveway crossings will avoid road construction parallel to the stream.</p>	<p>February 15, 2011:</p> <p>The Board agreed to defer discussion of this Issue to the next meeting to allow Staff adequate time to draft substitute language to address concerns with the language “generally perpendicular” while avoiding application of the exemption to parallel sections of roadway.</p> <p>Staff has prepared the following substitute exemption language for private road and driveway crossings:</p> <p>(f) Private road and driveway crossings constructed across the RPA, provided that such road segments are substantially perpendicular to the Ordinary High Water Mark of the stream within the RPA in the vicinity of the proposed crossing and further provided that:</p> <p>i. For the purposes of this Subsection (f), “substantially</p>

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	accompanying mitigation are required for permitted uses.				<p>perpendicular” shall be defined as follows: The centerline of every segment of the private road or driveway as extended to the stream shall intersect the Ordinary High Water Mark of the stream, and the angle of such intersection shall be greater than 60 degrees.</p> <p>ii. The Administrator makes a finding that there are no reasonable alternatives to aligning the private road or driveway crossing across the RPA;</p> <p>iii. The alignment and design of the private road or driveway crossing are optimized, consistent with other applicable requirements, to minimize encroachment in the RPA and to minimize adverse effects on water quality; and</p> <p>iv. The design and construction of the private road or driveway crossing satisfies all applicable Performance Criteria (Section 1222.17) and County Codes.</p> <p>March 1, 2011:</p> <p>The Board voted to direct Staff to proceed with the draft language. [9-0]</p>
12. (15)	<p>Should “the construction, installation, operation, and maintenance of wetland restoration, wetland mitigation, stream restoration, and stream stabilization” be added to the list of exempt uses?</p> <p>Current Draft Ordinance: Stream and wetland restoration and mitigation projects approved by the Virginia Department of Environmental Quality, the Virginia Marine Resources Commission, and/or the U.S. Army Corps of Engineers are included in the definition of “water-dependent facility,” which is identified as a permitted use under Section 1222.12(a) provided that:</p>	<p>1. Retain the current draft Ordinance.</p> <p>2. Include stream and wetland restoration and mitigation projects approved by the Virginia Department of Environmental Quality, the Virginia Marine Resources Commission, and/or the U.S. Army Corps of Engineers as exempt uses under Section 1222.11.</p> <p><u>Considerations:</u></p> <ul style="list-style-type: none">Exempting mitigation projects would eliminate the need for a Water Quality Impact Assessment and accompanying mitigation.The exemption would not require conformance with local erosion and sediment control requirements (wetland mitigation projects can currently opt out of local review following the approval of annual erosion control	<p>11-16-10 Triage of Issues:</p> <p>LVE Potential conflict with Federal law. (No conflicts in other 84 Tidewater jurisdictions.) (11 out of 20 stakeholders) EDC Need to simplify ordinance for wetland mitigation. WW Option #2 – added cost is a disincentive. PEC Option #1.</p> <p>Decision Taken 12-9-10:</p> <p>Stakeholders expressed general</p>	<p>Staff can support new Option #3, added in response to stakeholder discussion, as follows:</p> <p>Exempt stream and wetland mitigation projects in the RPA subject to approval of a grading permit.</p>	<p>February 15, 2011:</p> <p>The Board voted to support Staff Option #3 [8-0-1, York (absent)].</p> <p>Subsequent to the meeting, Staff confirmed with the County Attorney’s Office that State regulations preclude a locality from obtaining a local grading permit in cases where mitigation bankers file annual erosion control specifications with the Virginia Department of Conservation and Recreation, which would circumvent the related provision in new Option #3. Therefore, staff</p>

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	<p>i. It does not conflict with the Zoning Ordinance;</p> <p>ii. It complies with the Performance Criteria outlined in Section 1222.17;</p> <p>iii. Any non water-dependent component is located outside of the RPA; and</p> <p>iv. Access to the water dependent facility will be provided with the minimum disturbance necessary. Where practicable, a single point of access will be provided.</p> <p>A Water Quality Impact Assessment and accompanying mitigation are required for permitted uses.</p>	<p>specifications by the Virginia Department of Conservation and Recreation), would not require non water-dependent facilities to be located outside the RPA, and would not require that access to the facility minimize disturbance to the RPA, resulting in additional disturbances within the RPA that could have otherwise have been avoided.</p>	<p>support for exempting stream and wetland mitigation projects.</p> <p>(14 out of 20 stakeholders)</p>		<p>recommends that stream and wetland mitigation projects remain permitted uses as originally proposed (Option #1).</p> <p>March 1, 2011:</p> <p>The Board voted to support the Stakeholder Recommendation (Option #2). [5-4, Burk, Burton, Kurtz, McGimsey (Opposed)]</p>
13. (16)	<p>Should the following be added to the list of exempt uses in paragraph (e): the construction, installation, operation and maintenance of <u>connections to water wells and septic fields, sanitary sewer laterals and storm drains and storm sewers and their outfall structures?</u></p> <p>Current Draft Ordinance: Wells (and associated connections) are currently exempt in the RPA. Outfall structures of storm drains and sewers are included under the definition of “water-dependent facility,” which is a permitted us in the RPA. Septic fields and septic laterals are only permitted in the RPA in conjunction with administrative waivers for the loss of a buildable area or by exception. The construction of sanitary sewer lines and laterals is exempt.</p> <p>A Water Quality Impact Assessment and accompanying mitigation are required for permitted uses.</p>	<p>1. Retain the Current Draft Ordinance.</p> <p>2. Include septic field connections and storm drains and storm sewers and their outfall structures as exempt uses under Section 1222.11.</p> <p><u>Considerations:</u></p> <ul style="list-style-type: none">Exempting septic field connections and storm drains and storm sewers and their outfall structures would eliminate the need for a Water Quality Impact Assessment and accompanying mitigation.The exemption will result in additional disturbances within the RPA that could have otherwise have been avoided and eliminate the mitigation requirement.	<p>11-16-10 Triage of Issues:</p> <p>FSM Storm sewers and outfalls have to be located in the RPA. Option #2. EDC Option #2. Sewer main is allowed but lateral is not allowed. (Lateral is allowed. Septic connection is not.) NAIOP Wordsmithing, not a Major Issue.</p> <p>Decision Taken 12-9-10:</p> <p>Stakeholders expressed general support for exempting storm drains.</p> <p>(14 out of 20 stakeholders)</p>	<p>Staff can support new Option #3, added in response to stakeholder discussion, as follows:</p> <p>Include drainfields and drainfield connections approved prior to adoption as permitted uses in Section 1222.12. This would avoid the need for a property owner to obtain an RPA Exception to install a previously approved septic system/drainfield in the RPA or a connection to a previously approved septic field across the RPA, while requiring the development of a Water Quality Impact Assessment to assess and mitigate water quality impacts. Similar disturbances on new lots would require approval of an RPA Exception.</p> <p>Drainfields and/or drainfield connections in the RPA proposed after adoption would require the approval of an RPA Exception.</p> <p>Staff recommends maintaining storm drains as permitted uses, as opposed to exempt uses, to ensure that impacts within the RPA are minimized and mitigated.</p>	<p>March 1, 2011:</p> <p>The Board voted to support new Option #3. [6-3, Delgaudio, Waters, York (opposed)]</p> <p>Staff clarified that drainfields have to be setback 50 feet from any stream.</p> <p>Chairman York expressed a concern regarding the potential conflict between the reserve drainfield and RPA requirements on existing lots. Staff clarified that a drainfield/reserve drainfield can be installed in the RPA on existing lots where there is no alternative under the Administrative Waiver for Loss of a Buildable Area (Section 1222.19). Drainfields proposed in the RPA on new lots would require an exception.</p> <p>Supervisor Delgaudio requested information pertaining to the number of existing and permitted septic systems in the RPA.</p> <p>Supervisor Waters moved that the Board exempt storm drains and storm sewers and their outfall structures as exempt uses under Section 1222.11. [Motion failed 3-6, Buckley, Burk, Burton, Kurtz,</p>

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					Miller, McGimsey (opposed)] The Board voted to support Staff Option #1. [6-3, Delgaudio, Waters, York (opposed)]
14. (34)	<p>Can uses associated with HOA-owned property be exempted from RPA and RMA requirements?</p> <p>Current Draft Ordinance: HOA projects that propose disturbances in the RPA that are not otherwise permitted or exempt (e.g., trails) would be processed as RPA Exceptions. A Water Quality Impact Assessment would be required in conjunction with the RPA Exception to minimize and mitigate water quality impacts.</p> <p>The only applicable RMA requirements are the septic pump-out and the 2,500 square foot grading permit threshold.</p>	<p>1. Retain the current draft Ordinance.</p> <p><u>Considerations:</u></p> <ul style="list-style-type: none">HOA projects typically require a Site Plan and may require a Special Exception approval by the Board of Supervisors similar to other development projects. A wetland delineation is currently required prior to the approval of a Site Plan. A Perennial Flow Determination and identification of the buffer line would also be required under the current draft Ordinance. <p>2. Exempt development projects within the RPA on HOA-owned land.</p> <p><u>Considerations:</u></p> <ul style="list-style-type: none">The exemption would result in additional disturbances within the RPA.A Water Quality Impact Assessment to minimize and mitigate water quality impacts is not required for Exempt Uses.Should there be a square footage limit on the proposed exemption (e.g., 2,500 sf in the landward 50 feet)? <p>3. Allow development projects within the RPA on HOA-owned land to be processed as Administrative Waivers similar to Accessory Structures, as outlined in Option #2 Under Issue #15.</p> <p><u>Considerations:</u></p> <ul style="list-style-type: none">Disturbance of the RPA would be limited to 2,500 sf in the landward 50 feet.A Water Quality Impact Assessment would be required to minimize and mitigate water quality impacts. <p>4. Maintain the existing grading permit thresholds for HOA projects (10,000 square feet similar to the provisions for agricultural structures outlined in Option #2 Under Issue #20.</p> <p><u>Considerations:</u></p> <ul style="list-style-type: none">Would reduce the cost to HOAs to submit grading permit applications for small projects (e.g., trails).Would result in a minimal reduction in the level of water quality protection compared to the current draft Ordinance due to the fact that E&S controls	<p>This issue was raised during the 11-16-10 Stakeholder Meeting.</p> <p>Decision taken 12-14-10:</p> <p>It was noted that this was also a legal issue and that that it may not be possible to exempt properties or projects based solely upon ownership status.</p>	Ownership (by HOAs) cannot be used as a factor for exemptions from the regulations based on advice from the County Attorney.	<p>March 1, 2011:</p> <p>The Board elected not to take action on this issue.</p>

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		would not be implemented in conjunction with land disturbances greater than 2,500 sf, up to 10,000 sf.			
15. (7)	<p>Should multiple accessory structures with a cumulative footprint up to 2,500 sf be approved by an administrative waiver, as opposed to an exception, similar to minor additions?</p> <p>Current Draft Ordinance: Construction of detached accessory structures in the RPA requires the approval of an exception by the Chesapeake Bay Review Board following public notice and a public hearing.</p>	<p>1. Retain the current draft Ordinance.</p> <p>2. Include accessory structures in the allowance for adding up to 2,500 square feet of impervious area to existing uses in the RPA [see Section 1222.20(a)(i)] by modifying Section 1222.20(c) so as to only require an RPA exception (versus an RPA waiver, which is administrative) for when the cumulative impervious area increases after the adoption date exceeds 2,500 square feet.</p> <p><u>Considerations:</u></p> <ul style="list-style-type: none">The proposed amendment to Section 1222.20(a)(i) could result in the disturbance of the entire landward 50-feet of the RPA buffer on smaller residential lots. Given that this may be the entire extent of the RPA on these lots, there will be limited opportunities to provide the requisite mitigation on the subject property.The proposed amendment to Section 1222.20(c) would contradict the corresponding amendment to Section 1222.20(a)(i) by allowing disturbances for accessory structures with a cumulative impervious area up to 2,500 square anywhere in the buffer, including the seaward 50-feet, by administrative waiver.	<p>11-16-10 Triage of Issues:</p> <p>NAIOP no connection to the amount of RPA on the parcel. Increase sf with increased sf of RPA on the lot. % impervious area on parcel permitted within the RPA. EDC Performance-Based Criteria. LVE alternative language.</p> <p>Decision Taken 12-9-10:</p> <p>As part of the discussion of buffer widths, stakeholders expressed general support for exempting residential accessory structures on existing lots with qualifying limits such as the size of the lot or the percentage of the lot affected by RPA.</p> <p>(14 out of 20 in favor)</p>	<p>The staff can make this recommendation assuming a buffer width substantially wider than 35 feet.</p> <p>Staff can support amending Section 1222.20(a)(i) to allow accessory structures with a cumulative footprint of 2,500 sf in the Landward portion of the RPA to be reviewed by Administrative Waiver and the removal of Section 1222.20(b) and 1222.20 (c).</p> <p>Staff can also support new Option #3, added in response to stakeholder discussion, as follows:</p> <p>Modify Section 1222.20 to allow up to 2,500 square feet of land disturbance/impervious area in the Landward portion of the RPA by Administrative Waiver on lots that contain 50% or less RPA (86% of existing lots with RPA). Allow up to 5,000 sf of land disturbance/impervious area in the Landward portion of the RPA by Administrative Waiver on lots that contain more than 50% RPA (14% of existing lots with RPA).</p> <p>These limits would not be limited to additions and accessory structures and could include principle structures and uses. All other requirements in Section 1222.20, including the Water Quality Impact Assessment and required findings would apply.</p> <p>Consider adding an additional finding specifying that the waiver cannot be approved if adequate mitigation cannot be provided to offset the proposed disturbance/impervious cover. An RPA Exception would be required in such circumstances.</p>	<p>March 1, 2011:</p> <p>The Board voted to support the Staff Recommendation (Option #3, applicable to existing lots and inclusive of principle structures and uses. [7-2, Burton, Delgaudio (opposed)])</p> <p>Supervisor Burk moved to amend the motion to add an additional finding specifying that the waiver cannot be approved if adequate mitigation cannot be provided to offset the proposed disturbance/impervious cover, requiring an RPA Exception. [Motion passed 5-4, Delgaudio, McGimsey, Waters, York (opposed)].</p>
16. (32)	<p>Can accommodations be provided for dwellings in the RPA as of the date of adoption?</p> <p>Current Draft Ordinance: Additions up to 2,500 square feet in the landward 50-feet of the</p>	<p>1. Retain the current draft Ordinance.</p> <p>2. For dwellings located in the Landward 50-feet as of the date of adoption (approximately 1,092 addressed structures): Allow disturbances up to 2,500 square feet in the Landward 50-feet for minor additions and</p>	<p>This issue was raised during the 11-16-10 Stakeholder Meeting.</p> <p>Stakeholders did not take action on this issue.</p>	<p>The staff can make this recommendation assuming a buffer width substantially wider than 35 feet.</p> <p>Staff can support modified Option #3,</p>	<p>March 1, 2011:</p> <p>The Board voted to support modified Option #3 in the Staff Recommendation column. [9-0]</p>

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	RPA are processed as waivers. Additions greater than 2,500 square feet, additions that extend into the seaward 50-feet, and detached accessory structures are processed as RPA Exceptions, as outlined in Section 1222.20.	<p>accessory structures to be processed as Administrative Waivers as outlined in Option #2 under Issue #15.</p> <p><u>Considerations:</u></p> <ul style="list-style-type: none"> The Minor Water Quality Impact Assessment ensures that water quality impacts are minimized and mitigated. The incentive to locate structures in the Landward 50-feet, as opposed to the Seaward 50-feet is maintained. <p>3. For dwellings located in the Seaward 50-feet as of the date of adoption (approximately 173 addressed structures): Modify the requirements to allow disturbances up to 2,500 sf within the Seaward 50-feet for additions and structures accessory to a dwelling located within the Seaward 50-feet as of the date of adoption with the approval of an Administrative Waiver. Modify the requirement for a Major Water Quality Impact Assessment to require a Minor Water Quality Impact Assessment.</p> <p><u>Considerations:</u></p> <ul style="list-style-type: none"> The Minor Water Quality Impact Assessment does not require the assistance of a consultant or engineer. The Administrative Waiver replaces the requirement for disturbances in the Seaward 50-feet to be processed as an RPA Exception reviewed and approved by the Chesapeake Bay Review Board. 		<p>added in response to stakeholder discussion:</p> <p>Allow disturbances up to 2,500 sf in the Seaward portion of the RPA by Administrative Waiver with a Minor Water Quality Impact Assessment for additions and accessory structures associated with existing “structures” located in the RPA as of the date of adoption. The only modification to Option # 3 is that “dwelling” is replaced with “structure” to allow expansions to any existing structure in the RPA as of the date of adoption, including commercial structures.</p>	Supervisor Waters noted that the nonconforming use designation may create issues when selling property. The County Attorney clarified that the term nonconforming did not apply similar to a zoning use, which ceases if the use is discontinued or abandoned for a continuous period of more than two years. Supervisor Waters requested that staff modify the nomenclature from nonconforming to some other term (e.g., existing).
17. (6)	<p>Should the construction of accessory structures and uses, such as parking areas, be approved by an administrative waiver?</p> <p>Current Draft Ordinance: Accessory structures are permitted in the RPA with the approval of an RPA exception approved by the Chesapeake Bay Review Board following public notice and public hearing.</p>	<p>1. Retain the current draft Ordinance.</p> <p>2. Allow for the stated uses to be approved by an administrative waiver.</p> <p><u>Considerations:</u></p> <ul style="list-style-type: none"> Accessory uses such as parking areas introduce additional types of pollution into the RPA, such as pollutants originating from vehicles. 	<p>11-16-10 Triage of Issues:</p> <p>FSM What is an Administrative Waiver? (WQIA w/staff review). NVBIA Major Issue. EDC Administrative Waiver, but incorporate performance-based criteria in lieu of WQIA.</p> <p>Stakeholders did not take action on this issue.</p>	<p>Staff can support Option 2, provided that specific performance standards are included (i.e. parking areas limited to a certain size).</p>	<p>March 1, 2011:</p> <p>The Board voted to direct Staff to develop an Administrative Waiver with performance standards in the draft Ordinance for Board consideration. [8-1, Miller (opposed)].</p>
18. (17)	<p>Should Section 1222.14 (e) be removed, which requires that the full width of the Buffer Area be planted when and where an agriculture or silviculture use within the Buffer Area ceases and the lands are proposed to be converted to other uses be removed? Is the maintenance of existing ground cover sufficient?</p> <p>Current Draft Ordinance: Section 1222.14(e) requires the full width of the buffer area to be planted when and where an agriculture or silviculture use within the</p>	<p>1. Retain the current draft Ordinance.</p> <p><u>Considerations:</u></p> <ul style="list-style-type: none"> The referenced section requires areas of the buffer that have been previously deforested by agricultural or silvicultural activities to be replanted at the time of development. The reforestation restores the function of the buffer prior to the development of the property. <p>2. Remove Section 1222.12 (e).</p> <p><u>Considerations:</u></p>	<p>11-16-10 Triage of Issues:</p> <p>NAIOP Cost concern. Is fully forested buffer more functional than other types of vegetation? EDC Option #2. Costly. Term “change in use” is problematic. School project would require reforestation. Allow the area to naturally revegetate.</p> <p>Stakeholders did not take action on this issue and did not provide additional clarification.</p>	<p>Staff recommends retaining the current Ordinance to require the full width of the buffer area to be planted when and where an agriculture or silviculture use within the Buffer Area ceases and the lands are proposed to be converted to other uses. Staff recommends revising the Ordinance to clarify that the planting is only required when land used for agricultural or silviculture use in the buffer is included in a subdivision application or converts to a non-rural economy use that requires a site plan.</p>	<p>March 1, 2011:</p> <p>The Board voted to support the Staff Recommendation (Option #1). [7-1-1, Delgaudio (opposed), Waters (abstained)].</p>

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	Buffer Area ceases and the lands are proposed to be converted to other uses.	<ul style="list-style-type: none"> Removal of this requirement would significantly reduce the potential water quality improvement associated with the draft amendments and would result in the only required buffer planting to be associated with mitigation required in conjunction with permitted uses, administrative waivers, and exceptions for proposed disturbances within the RPA. 			
C.	RMA/PERFORMANCE CRITERIA				
19. (3)	<p>Should the Resource Management Area (RMA) be eliminated?</p> <p>Current Draft Ordinance: Currently, the entire County (except Towns) that is outside of the RPA is mapped as RMA.</p> <p>The following requirements are applicable within the RMA:</p> <p>1) Requires pumping out traditional septic systems once every five years and/or documentation of inspection of alternative systems; and</p> <p>2) Grading permit (E&S controls) for projects that exceed 2,500 sf of land disturbance (reduced from 5,000 sf for commercial, industrial, single family attached, and multifamily projects and 10,000 sf for other projects).</p>	<p>1. Retain the current draft Ordinance.</p> <p>2. Map the RMA only in areas that are known to have environmentally sensitive features (e.g., floodplains, highly erodible soils including steep slopes, highly permeable soils, nontidal wetlands not included in the RPA, and such other lands considered by the local government to be necessary to protect the quality of state waters).</p> <p><u>Considerations:</u></p> <ul style="list-style-type: none"> The pump-out and grading permit would not be required on land outside the RMA. There is very little land area that would not be encompassed by the RMA when all environmentally sensitive features are mapped. There would be two standards; one for areas within the RMA and one for areas outside of the RMA, which would increase the complexity of the program for applicants and staff. The jurisdiction-wide RMA provides regional consistency with Prince William County and Fairfax County. <p>3. Eliminate the RMA and amend the land disturbance threshold in the Erosion Control Ordinance and require the five-year pump-out and or documentation of inspection of alternative systems in the Codified Ordinance.</p> <p><u>Considerations:</u></p> <ul style="list-style-type: none"> This option would require additional amendments to be drafted and processed in a case where the current amendments achieve the same goal. 	<p>11-16-10 Triage of Issues:</p> <p>LVE #3 PEC #1 or #3 Goose Creek Community Association#3 EDC #3</p> <p>Stakeholders did not take action on this issue.</p>	<p>Staff can support Option #1 or #3. Both of these options would maintain the 2,500 sf E&S threshold and the 5-year septic pump-out criteria. However, Option #1 is preferred due to the fact that it maintains the three general performance criteria (minimize land disturbance, preserve indigenous vegetation, and minimize impervious cover) Countywide, which would be reviewed in conjunction with land development applications that disturb more than 2,500 sf of land.</p>	<p>April 5, 2011:</p> <p>The Board voted to support the Staff Recommendation (Option #3) [6-2-1, Burk, Kurtz (opposed), Miller (absent)].</p>
20. (8)	<p>Should the proposed land disturbance threshold that triggers the requirement for a grading permit (E&S control measures) be increased from the currently proposed 2,500 sf?</p> <p>A concern has been expressed that lowering the land disturbance threshold to 2,500 sf would result in an economic burden on the agricultural community and would have a negative impact on the rural economy.</p>	<p>1. Retain the current draft Ordinance.</p> <p>2. Retain the existing 10,000 sf threshold for agricultural structures and retain the proposed 2,500 sf threshold for all other applicable land disturbing activities.</p> <p><u>Considerations:</u></p> <ul style="list-style-type: none"> Would reduce the cost to farmers to submit grading permit applications. Would result in a minimal reduction in the level of water quality protection 	<p>11-16-10 Triage of Issues:</p> <p>REDC #2. Broad Run Farms Civic Association (BRF) 10,000 sf for everything. Increases threshold for multifamily, SFD, commercial, industrial. NAIOP #3. Ag Summit 10,000 sf agriculture, 5,000 sf for commercial facilities. PEC Major Issue.</p>	<p>Staff can support retaining the existing 10,000 sf threshold for agricultural structures and the proposed 2,500 sf threshold for all other applicable land disturbing activities (Option #2).</p>	<p>April 5, 2011:</p> <p>The Board voted to support the Staff Recommendation (Option #2) [5-3-1, Delgaudio, York, Waters (opposed), Miller (absent)].</p>

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	<p>Current Draft Ordinance: The draft regulations propose to reduce the land disturbance threshold requiring a grading permit from 5,000 sf for commercial, industrial, single family attached, and multifamily projects; and 10,000 sf for all other projects, to 2,500 sf for all projects.</p>	<p>compared to the current draft Ordinance due to the fact that E&S controls would not be implemented in conjunction with land disturbances greater than 2,500 sf, up to 10,000 sf.</p> <p>3. Retain all existing land disturbance thresholds.</p> <p><u>Considerations:</u></p> <ul style="list-style-type: none"> This option would not afford any additional water quality protection beyond existing requirements. 	<p>Stakeholders did not take action on this issue.</p>		
21. (28)	<p>Should the existing language in Chapter 1220, the Loudoun County Erosion Control Ordinance, allowing Agreements in Lieu of a Plan to be submitted for grading permit applications for single-family detached homes, rather than an erosion and sediment control plan be retained?</p> <p>Current Draft Ordinance: The Agreement in Lieu of a Plan was removed due to the difficulty with enforcing the Agreements and the need to require a plan of development for all projects that disturb more than 2,500 square feet to facilitate the analysis of whether or not an RPA delineation would be required and to implement the buffer requirements.</p>	<p>1. Retain the current draft Ordinance.</p> <p>2. Maintain the reference to Agreement in Lieu of a Plan in Chapter 1220.05 (a), 1222.05(x), and 1220.06(c) as suggested.</p> <p><u>Considerations:</u></p> <ul style="list-style-type: none"> The Agreement in Lieu of a Plan does not specify the specific location of the proposed improvements, the approved limits of disturbance, or the specific location of required erosion and sediment controls, which complicates implementation of the required measures by the applicant and enforcement by the County. There would be no plan on which to depict the RPA delineation. <p>3. Modified Option #2 as presented in the Staff Recommendation column.</p>	<p>11-16-10 Triage of Issues:</p> <p>PEC contingent upon Issue #1.</p> <p>Stakeholders did not take action on this issue.</p>	<p>Staff recommends that Option #2, retaining Agreements in Lieu of a Plan, be combined with a new provision requiring approval of a Locational Clearance (Section 1222.09) in cases where disturbances >2,500 sf are proposed in conjunction with the construction of a single-family detached home on a lot containing RPA.</p> <p>The Locational Clearance is needed to ensure a level of consistency with the requirement that all disturbances greater than 2,500 sf be subject to a “plan of development” [Section 1222.17(a)ii] and to identify potential impacts within the RPA.</p>	<p>April 5, 2011:</p> <p>The Board voted to support the Staff Recommendation (Option #3) [7-1-1, Delgaudio (opposed), Miller (absent)].</p>
22. (20)	<p>Should 1) the mandatory septic pump-out time frame be extended from five-years to a longer period of time, and/or 2) documentation that the system has been inspected and does not need to be pumped out, be added to reduce the financial burden of pumping systems that are not operating at full capacity (e.g., due to reduced occupancy)?</p> <p>Current Draft Ordinance: The current draft ordinance requires conventional septic systems to be pumped out once every five years and alternative septic systems to be pumped or inspected.</p>	<p>1. Retain the current draft Ordinance.</p> <p>2. Amend the Ordinance to revise the pump-out time frame.</p> <p><u>Considerations:</u></p> <ul style="list-style-type: none"> The Health Department recommends that septic systems be maintained every 3-5 years. Improper maintenance can result in system failure and water quality pollution. <p>3. Amend the Ordinance to allow the option for inspection of conventional septic systems similar to alternative septic systems.</p> <p><u>Considerations:</u></p> <ul style="list-style-type: none"> The Health Department has indicated that the pump-out does not cost appreciably more than the inspection, minimizing the advantage of only performing an inspection. This option results in the potential for an inspection that identifies a system near capacity, for which documentation of the pump-out would not be required for the next five years. 	<p>11-16-10 Triage of Issues:</p> <p>Ag Summit Don’t support pump-out time frame. Should link to use. Does Option #3 address concerns? Recommend against a pump-out requirement. REDC Rate of failure? PEC Option #1. DAAR No monitoring for septic systems except at time of sale. Don’t know if there is an issue? (1325 lb pound Nitrogen reduction per year.) Staffing issue. Cost of pump-out? LC Previously proposed, determined not to be needed. Add Option #4 to eliminate the requirement. NAIOP Additional information. NVBIA Alternative recommendations for time frames? SWCD Some notification should be provided that pump-out is needed.</p> <p>Stakeholders did not take action on</p>	<p>Staff recommends retaining the current Ordinance to require conventional septic systems to be pumped out once every five years and alternative septic systems to be inspected annually and pumped as needed consistent with existing Code requirements. (Option #1).</p>	<p>April 5, 2011:</p> <p>The Board voted to support the Staff Recommendation (Option #1) [7-1-1, Delgaudio (opposed), Miller (absent).]</p>

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		<ul style="list-style-type: none">Improper maintenance can result in system failure and water quality pollution.	this issue. This issue does relate to Issue #19.		
D.	DEFINITIONS (CBPO Section 1222.05)				
23. (12)	<p>Should the definition of “Plan of Development” be revised to exclude Concept Development Plans and Preliminary Subdivisions, with the intent of not requiring site specific RPA delineations for such applications?</p> <p>Current Draft Ordinance: Concept Development Plans and Preliminary Subdivision Plats are included in the definition of Plan of Development.</p>	<p>1. Retain the current draft Ordinance.</p> <p><u>Considerations:</u></p> <ul style="list-style-type: none">Identifying the RPA at the time of rezoning, special exception, and preliminary plat ensures full compliance with the ordinance. <p>2. Change the definition as proposed.</p> <p><u>Considerations:</u></p> <ul style="list-style-type: none">The RPA delineation is necessary at the time of rezoning, special exception, and preliminary plat to determine the extent of the RPA and to identify whether or not an exception is needed. Not requiring this information would result in reduced water quality protection and the potential for substantial conformance issues later in the development process, which add delay and cost for the applicant, the Board, and staffThis option results in the potential for the specified land development applications to depict encroachments into the RPA that would subsequently be grandfathered.	<p>11-16-10 Triage of Issues:</p> <p>PEC Option #1. Contingent on Issue #1. NAIOP Contingent on Issue #1. Industry concern is level of cost and expense at early stage in development. If RPA were more definitive, this would be less of an issue.</p> <p>Stakeholders did not take action on this issue.</p>	<p>Based on the resolution of Issue #1, RPA delineations will no longer be required by the ordinance; therefore no action is required.</p>	<p>April 5, 2011:</p> <p>The Board chose to defer discussion on this Issue to a future meeting, pending clarification of the Board’s action on Issue #1.</p> <p>The Board directed Staff to listen to the audio from the March 1, 2011 Board Committee of the Whole Meeting on the Chesapeake Bay Preservation Act Amendments regarding votes taken on Issue #1 (mapping of the RPA).</p> <p>Staff confirmed that the Board voted to support Option #5 (use the RPA as currently mapped and do not require additional RPA delineations) as indicated under Issue #1.</p>
24. (13)	<p>Should the definition of “Redevelopment” be revised?</p> <p>Current Draft Ordinance: The draft ordinance includes an amended definition recommended by the Planning Commission:</p> <p><i>“Redevelopment” means the process of developing land in the same physical location, that is or has been previously developed, where there is no increase in the amount of impervious cover and no further encroachment into the Resource Protection Area.</i></p> <p>Section 1222.12(b) states:</p> <p>Redevelopment, provided that: there is no increase in the amount of impervious cover, it is in the same physical location, there is no further encroachment into the RPA, and it conforms with the Erosion and Sediment Control and Stormwater Management Requirements outlined in Section 1222.17.</p>	<p>1. Retain the current draft Definition.</p> <p>2. Revise as follows: "Redevelopment" means the substantial alteration, rehabilitation, or rebuilding of a property for residential, commercial, industrial, or other purposes where there is no net increase in impervious area by the proposed redevelopment within an RPA and no more than a net increase in impervious area within an RMA of 20% relative to conditions prior to redevelopment, or any construction, rehabilitation, rebuilding, or substantial alteration of residential, commercial, industrial, institutional, recreational, transportation, or utility uses, facilities or structures within an IDA.</p> <p><u>Considerations:</u></p> <ul style="list-style-type: none">There are no prohibitions on redevelopment within the RMA, thus there is no need to provide language relative to redevelopment within the RMA.	<p>11-16-10 Triage of Issues:</p> <p>FSM IDA (Intensely Developed Area) is new term. Issue #(27). Changes the Zoning Ordinance definition of redevelopment. (Does not change the Zoning Ordinance definition. The definition is only applicable to CBPO.) BRF Big Issue EDC May not be an issue if there are other permissible encroachments into the RPA.</p> <p>Stakeholders did not take action on this issue and did not provide additional clarification.</p>	<p>Staff supports retaining the current definition of “Redevelopment.” (Option #1)</p>	

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	The <u>Revised General Plan</u> defines redevelopment as "A change in land use which would involve the removal and replacement, rehabilitation, or adaptive reuse of an existing structure or structures, or of land from which previous improvements have been removed. Redevelopment should be compatible with adjacent properties and occur with input and involvement from the community."				
E.	MINIMUM LOT SIZE (CBPO SECTION 1222.16)				
25. (18)	<p>Should the minimum distance between the RPA and the principal structure be reduced?</p> <p>It may be difficult to determine which yard (front, side, rear) would apply for odd shape lots.</p> <p>Current Draft Ordinance: The minimum distance between the RPA and the principal structure on new residential lots shall be equal to the minimum corresponding required yard (front, side and rear) of the applicable zoning district to ensure useable lot area is maintained.</p>	<p>1. Retain the current distance to equal the minimum corresponding required yard (front, side and rear) of the applicable zoning district.</p> <p>2. Reduce the distance to 10 feet.</p> <p><u>Considerations:</u></p> <ul style="list-style-type: none">Reduction in the setback increases the potential for minor additions to encroach into the RPA, resulting in additional disturbances to the RPA. <p>3. Require a setback of 20 feet from the RPA for principal residential structures on new lots as presented in the Staff Recommendation column.</p>	<p>11-16-10 Triage of Issues:</p> <p>NVBIA Proposed the suggested change. Subordinate issue. FSM Does not necessarily have to be a 10-foot dimension. Issue is which yard is it on a curving lot? NAIOP Percentage of required yard has to be outside of the RPA (e.g., larger lots). PEC May need more than 10 feet, but support a fixed setback, not dependent upon the yard.</p> <p>Stakeholders did not take action on this issue.</p>	Staff supports a fixed setback of a certain dimension, and seeks guidance from the Board of Supervisors on the exact dimension. For Board consideration, Staff suggests a minimum setback of 20 feet from the RPA for principal residential structures on new lots. (New Option #3).	
F.	WATER QUALITY IMPACT ASSESSMENT (CBPO 1222.18)				
26. (21)	<p>Should the Water Quality Impact Assessment (WQIA) be modified so that a Major WQIA is not required for encroachments into the seaward 50 feet of the Buffer Area associated with smaller structures?</p> <p>Current Draft Ordinance: The current draft ordinance requires a Major WQIA for disturbances in the seaward 50-feet of the RPA, which requires studies and plans from a consultant and engineer.</p> <p>The requirements have been structured such that an additional level of detail would be required for improvements proposed within the seaward 50-feet in order to pinpoint the limits of land disturbing activity in relation to the location of perennial water bodies, connected wetlands, and the 100-foot buffer.</p>	<p>1. Retain the current draft Ordinance.</p> <p>2. Amend the WQIA requirements for smaller structures.</p> <p>Considerations:</p> <ul style="list-style-type: none">Issue #3 addresses exemptions of structures in the RPA up to a cumulative total of 150 sf. A WQIA is not required for exempt uses.This would remove the incentive to locate small structures outside of the seaward 50-feet of the buffer. <p>3. Allow a Minor Water Quality Impact Assessment to be submitted for the construction of docks and piers in the seaward portion of the RPA and in conjunction with the waiver for 5,000 sf of land disturbance/impervious area in the Landward portion of the RPA on lots that contain more than 50% RPA as presented in the Staff Recommendation column.</p>	<p>11-16-10 Triage of Issues:</p> <p>EDC Replace WQIA with performance-based standards. (Exempt uses don't require WQIA.) PEC Exemptions of other structures (#5) will affect the outcome. Major Issue. BRF Contingent upon Issue #(33).</p> <p>Stakeholders did not take action on this issue.</p>	<p>As noted in Option #2, Issue #3 exempts residential accessory structures located anywhere within the RPA up to a cumulative total of 150 sf per lot. A Water Quality Impact Assessment is not required for exempt uses.</p> <p>Staff supports modifying the ordinance to allow submission of a Minor Water Quality Impact Assessment for the construction of docks and piers in the Seaward portion of the RPA and in conjunction with the waiver for 5,000 sf of land disturbance/impervious area in the Landward portion of the RPA on lots that contain more than 50% RPA (Issue #15). These modifications are collectively referred to as New Option #3.</p>	

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	The current structure provides an incentive to locate structures outside of the seaward 50-foot of the 100-foot buffer adjacent to perennial streams and water bodies consistent with the purpose of the ordinance.				
G.	ADMINISTRATIVE WAIVER FOR LOSS OF BUILDABLE AREA (CBPO 1222.19)				
27. (22)	<p>Should the phrase “Buffer Area” be replaced with “RPA”?</p> <p>Current Draft Ordinance: Section 1222.19 allows encroachment into the 100-foot Buffer Area, but not into the RPA itself, which includes connected wetlands.</p> <p>The waiver requires that encroachments into the Buffer Area shall be the minimum necessary to achieve a reasonable buildable area for a principal structure and necessary utilities.</p>	<p>1. Retain the current draft Ordinance.</p> <p>2. Amend Section 1222.19 to replace “Buffer Area” with “RPA.”</p> <p><u>Considerations:</u></p> <ul style="list-style-type: none">Allows potential impacts to connected wetlands that would otherwise be protected by the application of the RPA requirements.	<p>11-16-10 Triage of Issues:</p> <p>EDC Same? WW Not into the core components? Only the buffer. Need clarification that wetland cannot be impacted by an Administrative Waiver, only buffer. Option #1. Clarify language.</p> <p>Stakeholders did not take action on this issue.</p>	Given the Board’s direction regarding Issue #1 to measure the buffer from perennial water bodies as currently mapped, as opposed to measuring the buffer from connected wetlands, the terms “RPA” and “Buffer Area” have the same meaning; therefore, staff supports replacing the phrase “Buffer Area” with “RPA” (Option #2).	
28. (23)	<p>Should the requirement for a Water Quality Impact Assessment be eliminated in Section 1222.19(a)vi to reduce costs to homeowners?</p> <p>Current Draft Ordinance: Section 1222.19(a)vi. requires a Water Quality Impact Assessment to be submitted in conjunction with the waiver request.</p> <p>As currently drafted, disturbances less than 2,500 square feet in the landward 50-feet of the RPA requires a Minor Water Quality Impact Assessment that can be prepared by the applicant without assistance from a consultant or engineer and staff can perform the RPA delineation.</p>	<p>1. Retain the Current Draft Ordinance.</p> <p>2. Delete Section 1222.19(a)vi.</p> <p><u>Considerations:</u></p> <ul style="list-style-type: none">Eliminating the Water Quality Impact Assessment would eliminate the requirement for an RPA delineation to be performed for disturbances less than 2,500 square feet in the RPA.Eliminating the Water Quality Impact Assessment would remove the requirement to analyze water quality impacts and to mitigate proposed disturbances in the RPA beyond establishing a vegetated buffer equal to the area of encroachment on the lot or parcel.	<p>11-16-10 Triage of Issues:</p> <p>WQIA is a major issue for discussion.</p> <p>Stakeholders did not take action on this issue.</p>	<p>Issue #3 exempts residential accessory structures located anywhere within the RPA up to a cumulative total of 150 sf per lot. A Water Quality Impact Assessment is not required for exempt uses.</p> <p>This Issue relates to Issue #15, where Staff has recommended that a Minor WQIA be required, which does not require assistance from a consultant or engineer, and reduces costs to homeowners. The same standards would apply to the Waiver for the Loss of a Buildable Area (Section 1222.19). Therefore, staff supports retaining the WQIA requirement, with the proposed amendments recommended elsewhere in the Matrix.</p>	
H.	RPA EXCEPTIONS (CBPO SECTION 1222.23)				
29. (35)	<p>Should RPA Exceptions be submitted to the Planning Commission or the Facilities Standards Manual Public Review Committee for review and approval?</p> <p>Current Draft Ordinance: RPA Exceptions are reviewed by the Chesapeake Bay Review</p>	<p>1. Retain the current draft Ordinance.</p> <p><u>Considerations:</u></p> <ul style="list-style-type: none">The CBRB includes members from diverse economic sectors that have demonstrated knowledge and interest in environmental issues.	<p>This issue was raised during the 11-16-10 Stakeholder Meeting.</p> <p>Stakeholders did not take action on this issue.</p>	Staff recommends that the current ordinance be retained such that RPA Exceptions associated with legislative applications be processed by the Board of Supervisors and that RPA Exceptions associated with all other applications be processed by the CBRB (Option #1).	

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	Board (CBRB). The CBRB is composed of 9 members, with demonstrated knowledge of and interest in environmental issues appointed by the Board of Supervisors for a term of 4 years. The members represent diverse professions related to agriculture, land development, and the environment.	<p>2. Specify that RPA Exceptions be submitted to the Planning Commission or the Facilities Standards Manual Public Review Committee for review and approval.</p> <p><u>Considerations:</u></p> <ul style="list-style-type: none"> The membership of these groups is not subject to specific requirements related to economic sector representation and environmental knowledge and experience. 			
I.	APPEALS (CBPO SECTION 1222.24)				
30. (26)	<p>Should appeals of administrative decisions be processed by the Board of Supervisors, rather than the Chesapeake Bay Review Board (CBRB)?</p> <p>Current Draft Ordinance: Section 1222.24 is structured such that appeals of administrative decisions are reviewed by the CBRB.</p> <p>The issue is whether these decisions should be forwarded directly to the elected officials, who are accountable to the public, which will reduce time and court costs.</p>	<p>1. Retain the current draft Ordinance.</p> <p>2. Amend Section 1222.24 as suggested.</p> <p><u>Considerations:</u></p> <ul style="list-style-type: none"> The members of the CBRB are required to have demonstrated knowledge of and interest in environmental issues and represent diverse professions related to agriculture, land development, and the environment and are appointed by the Board of Supervisors. 	<p>11-16-10 Triage of Issues:</p> <p>LVE Option #1 PEC Option #1. Provide PC discussion and why they chose to retain CBRB. EDC Why even have the CBRB? Item #(35) Administrative vs. Exceptions. BRF BOS. Ag Summit BOS. WW Appeal would take longer. BOS has a busier schedule.</p> <p>Stakeholders did not take action on this issue.</p>	Staff recommends that appeals of administrative decisions be reviewed by the CBRB (Option #1).	
J.	FACILITIES STANDARDS MANUAL (FSM)				
31. (30)	<p>Can a property owner or applicant submit an RPA delineation for approval separate of a plan of development?</p> <p>Current Draft FSM: While the current draft FSM does not preclude the submission of an RPA delineation application independent of a plan of development, it does not specify the accompanying application standards.</p>	<p>1. Retain the current draft FSM.</p> <p>2. Clarify that RPA delineations can be submitted separate from a plan of development and draft standards for the submission and review of an RPA delineation application.</p>	<p>11-16-10 Triage of Issues:</p> <p>LVE/PEC Contingent upon Issue #1.</p> <p>Stakeholders did not take action on this issue.</p>	Based on the resolution of Issue #1, RPA delineations will no longer be required; therefore no action is required.	
32. (31)	<p>Should the following Sections of the FSM be amended to not require the location of the Ordinary High Water Mark (OHWM) of perennial water bodies, connected wetlands, where applicable, and the Buffer Area to be shown on the development plan, but rather just the approved RPA line?:</p> <p>8.102.A.41 8.103.A.40 8.103.8.A.15</p>	<p>1. Retain the current draft FSM.</p> <p>2. Modify the requirements to depict only the RPA line on the plan of development in the referenced FSM sections.</p> <p><u>Considerations:</u></p> <ul style="list-style-type: none"> The proposed amendment would result in the inability of Staff to verify that the “RPA line” is depicted correctly (e.g., 100-feet from the ordinary high water mark of the perennial stream and/or connected wetlands) on subsequent plans. 	<p>11-16-10 Triage of Issues:</p> <p>FSM detail associated with the submission of development plans.</p> <p>Stakeholders did not take action on this issue and did not provide additional clarification.</p>	Based on the resolution of Issue #1, RPA delineations will no longer be required; therefore no action is required.	

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	8.106.A.41 8.109.B.4 8.111.8 The issue is whether or not details associated with an application for RPA approval need to also be shown on subsequent plan applications due to the fact that it is redundant, expensive, and unnecessary to show this data multiple times. Showing only the approve RPA line should be all that is necessary.	<ul style="list-style-type: none">These features are necessary to evaluate the conditions associated with exempt and permitted uses, the Water Quality Impact Assessment, mitigation options, and associated RPA exceptions.The proposed amendment would result in a lack of disclosure to property owners regarding the presence of these features on recorded lots, which could increase potential RPA violations.			
K.	GRANDFATHERING & IDAS				
33. (9)	<p>Should the grandfathering policy require previously approved projects to meet the CBA regulations to the “greatest extent possible” or the “extent practicable”?</p> <p>Current Draft Grandfathering Policy: The current Draft Grandfathering Policy requires pending plans to comply with the Ordinance to the “greatest extent possible” consistent with Opinions of the Attorney General and with Section 15.2-2261 of the Virginia Code, which states:</p> <p><i>“Nothing contained in this section shall be construed to affect ... (iii) the application to individual lots on recorded plats or parcels of land subject to final site plans, to the <u>greatest extent possible</u>, of the provisions of any local ordinance adopted pursuant to the Chesapeake Bay Preservation Act (§ <u>10.1-2100 et seq.</u>).”</i></p>	<p>1. Retain the current draft Grandfathering Policy.</p> <p><u>Considerations:</u></p> <ul style="list-style-type: none">The current grandfathering policy allows encroachments into the RPA buffer without the approval of an exception to reduce costs associated with complying with the requirements. <p>2. Amend the current draft Grandfathering Policy to read “extent practicable.”</p> <p><u>Considerations:</u></p> <ul style="list-style-type: none">Would introduce cost as a factor in determining the level of required compliance.Has the potential to reduce the water quality benefits obtained by implementation of the Ordinance.The current grandfathering policy allows encroachments into the RPA buffer without the approval of an exception to reduce costs associated with complying with the requirements. <p>3. Amend the current draft Grandfathering Policy to read “extent possible.”</p> <p><u>Considerations:</u></p> <ul style="list-style-type: none">This change offers a compromise solution consistent with the Fairfax County policy that does not reduce the water quality benefit obtained by implementation of the Ordinance.	<p>11-16-10 Triage of Issues:</p> <p>PEC How does extent practicable differ from extent possible? LVE Conflicts with proffers can’t be overridden. (Proffers are extension of the Zoning Regulations). NAIOP Concept Plan Amendments? (Not required). NVBIA Grandfather all approved projects [Issue #(36)] PEC Vested projects identified in Virginia Code. Major Issue.</p> <p>Decision Taken 12-9-10 in regard to Issue #(36) removes the phrase “to the extent possible” in its entirety (14 out of 20 in favor)</p> <p><i>[Also see decision on Issue #(36)]</i></p>	Staff supports retaining the current draft Grandfathering Policy, but changing “the greatest extent possible” to read “extent possible” (Option #3).	

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34. (10)	<p>Should Section 7(b) of the draft Grandfathering Policy be amended such that compliance with the regulations would not be required if it would result in the following:</p> <p>(iv) a change in housing type or significant change in lot size, (v) a change in the type of use (i.e., surface parking to structured, one-story building to multi-story), or (vi) a substantial modification to the land plan if said plan was proffered”?</p> <p>Current Draft Grandfathering Policy: The current Draft Grandfathering Policy requires an RPA delineation to be performed for pending plans and requires these plans to meet the Ordinance requirements to the greatest extent possible. The policy also allows pending plans to encroach into the RPA without the approval of an RPA exception.</p>	<p>1. Retain the current draft Grandfathering Policy.</p> <p>2. Amend the current draft Grandfathering Policy by adding 7.b.(iv) to provide that compliance would not be required if it would result in a change in housing type to include, but not limited to, changes in housing type from single family detached to multifamily.</p> <p>3. Amend the current draft Grandfathering Policy to provide that compliance would not be required if it would result in a significant change in lot size.</p> <p><u>Considerations:</u></p> <ul style="list-style-type: none">This change would prevent consideration and discussion of a change from a traditional grid development to a cluster development as a potential approach, without loss of density, to avoid impacts to the RPA. <p>4. Amend the Current Draft Grandfathering Policy to provide that compliance would not be required if it would result in a change in the type of use (i.e., surface parking to structured, one-story building to multi-story.</p> <p><u>Considerations:</u></p> <ul style="list-style-type: none">This change would preclude the consideration and discussion of vertical integration as a potential approach to avoid impacts to the RPA, which may be appropriate at certain densities in certain zoning districts. <p>5. Amend the Current Draft Grandfathering Policy to provide that compliance would not be required if it would result in a substantial modification to the land plan if said plan was proffered.</p> <p><u>Considerations:</u></p> <ul style="list-style-type: none">This provision is already included in the Current Draft Grandfathering Policy as Item 7(a).	<p>11-16-10 Triage of Issues:</p> <p>FSM Issue #9 & #10 Major Issue – Dedicate a Meeting to the topic. PEC Agrees. NAIOP Explain Pending Plans.</p> <p>Stakeholders did not take action on this issue and did not provide additional clarification.</p>	<p>Staff can support Option #1 and Option #2.</p>	
35. (36)	<p>Should the Grandfathering policy be amended to allow approved projects to proceed as is?</p> <p>Current Draft Grandfathering Policy: Applicants are required to perform RPA delineations and to conform to the requirements to the “greatest extent possible.” Encroachments into the RPA are permitted without the approval of an RPA Exception where the requirements cannot be met. The current policy requires “Where possible, a vegetated area, planted in accordance with Chapter 7 of the FSM, equal to the area encroaching into the RPA buffer area, and subject to a recorded easement, shall be established elsewhere on the lot or parcel in such a way as to maximize water</p>	<p>1. Retain the current draft Grandfathering Policy.</p> <p><u>Considerations:</u></p> <ul style="list-style-type: none">The current policy ensures that disturbances into the RPA are minimized to the greatest extent possible without requiring subsequent review and action by the Board of Supervisors or the Chesapeake Bay Review Board when encroachments into the RPA are necessary to accommodate the approved development. The current policy also requires mitigation in the form of planting an equivalent area elsewhere on the lot or possible, where possible, to offset the water quality impact of the encroachment. <p>2. Amend the Grandfathering Policy so that it does not require conformance with the RPA requirements.</p> <p><u>Considerations:</u></p>	<p>This issue was raised during the 11-16-10 Stakeholder Meeting.</p> <p>Decision Taken 12-9-10:</p> <p>Agreed to County Attorney’s language to grandfather “accepted and approved plans” with the removal of the qualifying phrase “to the greatest extent possible,” such that conformance to the new regulations would not be required.</p> <p>(14 out of 20 in favor)</p> <p>Comments included:</p>	<p>Staff recommends retaining the current draft Grandfathering Policy (Option #1), with the amendment outlined in Issue #33, to require the implementation of the RPA requirements to the “extent possible” for the referenced applications, without requiring approval of an RPA Exception.</p> <p>Modification of the grandfathering policy as suggested would not result in any water quality improvements being implemented in conjunction with the referenced applications other than what is currently required.</p>	

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	quality protection and mitigate the effects of the buffer encroachment.”	<ul style="list-style-type: none"> Potential adjustments to the development layout to minimize disturbances into the RPA would not be evaluated resulting in possible disturbances to the RPA, which would reduce water quality protection. 	<p>- Timing is important</p> <p>- Whether an application must have been forwarded to the Board following a Planning Commission public hearing to be grandfathered is a big issue to the Chamber of Commerce.</p>		
36. (27)	<p>Should buffer encroachments be authorized in the Route 28 Tax District and other designated areas targeted for economic development? Should these areas be designated IDAs?</p> <p>Current Draft Ordinance: There are no buffer encroachments presently authorized within these areas. Encroachments into the buffer that are not otherwise permitted or exempt would require the approval of an administrative waiver or RPA exception. The Ordinance outlines the process for applying for an RPA exception, which requires the submission and review of a Water Quality Impact Assessment analyzing the water quality impacts of the proposed disturbance in the RPA and accompanying mitigation, to address proposed buffer reductions. Density credit is provided for land within the RPA, as well as the Major Floodplain.</p> <p>The Route 28 Tax District was deemed not to meet the regulatory requirements to be designated as an Intensely Developed Area (IDA), which would allow reduction of the buffer. The IDA is intended to apply in cases where development has severely altered the natural state of the area such that at least one of the following conditions exist at the time of adoption: 1) there is more than 50 percent impervious surface; 2) public sewer and water systems or a constructed stormwater drainage, or both have been constructed (not planned) as of the local adoption date; or 3) housing density is equal to or greater than four dwelling units per acre.</p>	<p>1. Retain the current draft Ordinance.</p> <p>2. Authorize buffer encroachments for development within the Route 28 Tax District and other designated areas targeted for economic development.</p> <p><u>Considerations:</u></p> <ul style="list-style-type: none"> Would reduce costs associated with land development applications and maximize developable land area. Additional costs would be associated with the requirement to identify perennial streams and the boundary of the RPA in addition to existing wetland delineation requirements and to obtain a waiver or RPA exception for disturbances in the RPA that are not otherwise exempt or permitted. Significant areas of natural environment remain within the Route 28 Tax District, with 31 percent of the area being impervious based upon current Geographic Information System data. Approximately 8 percent of parcels within the Route 28 Tax District contain RPA, compared to 10 percent Countywide. Approximately 58 percent of the RPA within the Route 28 Tax District falls within the Major Floodplain, where development is already limited by the Zoning Ordinance regulations of the Floodplain Overlay District. The addition of authorized buffer encroachments has the potential to significantly reduce the water quality protection afforded by the draft Ordinance, resulting in additional disturbances within the RPA that could have otherwise have been avoided. The water quality impacts associated with a reduction of the buffer or the authorization of additional buffer encroachments without the review and approval of a waiver or exception would be significant due to the absence of mitigation to offset these impacts. 	<p>11-16-10 Triage of Issues:</p> <p>PEC Major Issue. FSM Major Issue impacted by Grandfathering discussion.</p> <p>Discussion/comments 12-14-10 included:</p> <ul style="list-style-type: none"> – This seems irrelevant. – IDA is a common provision for flexibility. – Rt. 28 district doesn’t meet the IDA criteria. – Why single out this one area? Message is about the importance of economic development. – Send a message about water quality? – We’ve lost the balance of water quality and economic development. – Don’t give tax breaks to big commercial users. – Many other urban areas do incorporate water quality standards. – Water quality can enhance economic development. <p>Decision Taken 12-14-10:</p> <p>Stakeholders expressed general support for allowing “buffer encroachments to be authorized in the Route 28 Tax District and other designated areas targeted for economic development.”</p> <p>(16 out of 26 stakeholders)</p>	Staff recommends Option #1 due to the fact that the current draft Ordinance outlines a process for RPA Exceptions to allow encroachments into the RPA in cases where application of the Ordinance causes a constraint to development of the property. Staff would recommend that should the Board want to consider authorizing additional encroachments that this been taken up following a discussion of proposed Exemptions and Administrative Waivers. In addition, these designated areas would need to be identified.	

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L.	OTHER STAKEHOLDER COMMENTS/QUESTIONS				
37. (37)	Need a fresh look at review processes, including agricultural structures, individual dwellings/accessory structures, and land development applications.	Consider as each issue is being discussed and at the end of the stakeholder process.	This issue was raised during the 11-16-10 Stakeholder Meeting. [See Issue # 39.]	Staff agrees that the processes in the ordinance should be simplified/clarified and is open to any additional ideas for simplifying and/or clarifying the draft amendments and the related processes.	
38. (38)	What are the staffing costs? Provide an analysis of different scenarios and how they impact the number of applications, staffing, and time delays.	Consider as each issue is being discussed and at the end of the stakeholder process.	This issue was raised during the 11-16-10 Stakeholder Meeting. Stakeholders did not provide any additional detailed recommendations regarding this issue.	Staff maintains that the amendments can be administered by existing staff.	
39. (39)	Simplify the current draft Ordinance and related processes to the extent possible.		This issue was raised during the 11-16-10 Stakeholder Meeting. The discussion on 12-14-10 centered on the question of what does “simplify” mean? – Some areas need more clarity; define what steps are required and when they occur. – Doesn’t mean reducing water quality. – Processes should be structured based upon current capabilities (people, processes, and technology). – Remove “unnecessary and costly” steps – Provide certainty of process/timeline. – Remove inconsistencies and define “change in use.” – It was noted that the group was advisory and was not writing the ordinance Decision taken 12-14-10: Stakeholders agree to recommend that all processes in the ordinance should be re-reviewed with the goal to simplify all of them, for homeowners, developers, farmers, and staff. (22 of 26 in favor – no opposition recorded). [See Issue #37.]	Staff agrees that the processes in the ordinance should be simplified/clarified and is open to any additional ideas for simplifying and/or clarifying the draft amendments and the related processes.	

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40. (40)	Expand on the list of permitted uses.		This issue was raised during the 11-16-10 Stakeholder Meeting. Stakeholders did not provide any additional detailed recommendations regarding this issue.	Based on Stakeholder input and the Staff recommendations in the Issues Matrix, Staff believes that more uses are being permitted to encroach in the RPA with less restrictive regulations.	
M.	BIN ISSUES FOR BOARD CONSIDERATION				
41. (41)	Will water quality impacts of the draft ordinance be analyzed? What’s working and what’s not? What is the impact on the stream – is it measurable or not?				
42. (42)	Will there be a cost/benefit analysis? What is clean water? What is the goal? Include public assistance programs (e.g., cost-share) in analysis. Analyze at the macro and micro level.				